

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 226 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1-5 No

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BAI PREMIBAI LAXMANBHAI

Versus

.ARANDAS CHATRAKHUJ & 5 .

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Appearance:

MR BD KARIA for Petitioner

MR UA TRIVEDI for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/04/98

ORAL JUDGEMENT

1. This revision application under Section 115 of C.P.C. is directed against the order dated 11.1.1995 passed by the Assistant Judge, Morvi, rejecting the amendment application Exh. 13.

2. Narandas Chatrabhuji filed a suit for recovery of the suit shop situated at Para Bazar in Morvi town on the

ground that the said shop was rented out to Shri Laxman Shamji and after his death the tenancy has transmitted to none. He also sought eviction on the ground of personal and bona fide necessity. The defendant filed separate written statement. It was stated in the written statement that the defendant No. 6 Jayantilal was legally adopted son. It was also stated that on account of indisposed health of deceased Laxman Shamji, Jayantilal used to manage small business of selling flowers during the life time of deceased Laxman Shamjibhai. Thus, after the death of tenant Laxmanbhai tenancy right in respect of shop in question transmitted to said adopted son Jayantilal. The suit came to be decreed by the Civil Judge (S.D.) by judgement and decree dated 28.8.1989. The defendant preferred appeal against the said judgement and decree. During the pendency of appeal defendant submitted an application Exh. 13 under Order 6 Rule 17 of the C.P.C. by introducing para 6A which reads as under:-

"If in any circumstances, court come to the conclusion that the defendant No. 6 has not acquired any tenancy right, then such a tenancy right acquired by herself and the defendant No. 6 jointly or tenancy right acquired by the legal heirs of the deceased or tenancy right acquired by herself or defendant No. 6"

The learned judge found that the plea taken by way of amendment is contradictory and as such rejected the application by the impugned order.

3. Mr. Karia learned counsel appearing for the petitioner contends that the learned judge has committed material illegality in exercise of jurisdiction in rejecting the amendment application on the ground that if the plea is allowed to be taken in the written statement, it amounts to permitting contradictory pleas. He submits that reading of the plea would show that it is an alternative plea. Relying on a decision of apex court in the case of BASAVAN JAGGU DHOBBI VS. SUKHNANDAN RAMDAS CHAUDHARY reported in 1995 Supp. (3) SCC 179 contends that an alternative plea is permissible. On the other hand Mr. U.A. Trivedi learned counsel for the respondents submits that the effect of allowing written statement is permitting to withdraw the admission which is not permissible. He places reliance on the decisions of the apex court in the case of HEERALAL VS. KALYAN MAL reported in AIR 1998 SC 618, M/S. MODI SPG. & WVG. MILLS VS. LADHA RAM & CO. reported in AIR 1977 SC 680, MD. ISHAQ VS. MD. IQBAL & MD. ALI & CO. reported in

4. I have considered the rival contentions. So far as the authorities referred by Mr. Trivedi are concerned, none of them is applicable to the facts of the present case. In HEERALAL's case (supra) the court held that amendment which has an effect of withdrawing of admission cannot be granted. Similar view has been taken in M/s. Modi Spg. & Wvg. Mills' case (supra). In the present case there is no question of withdrawing of any admission. In Md. Ishaq's case (supra) the court has held that new case and additional evidence cannot be permitted. It may be stated that in the present case amendment in the written statement does not have any effect of entertaining new case and allowing additional evidence. In fact, in the present case the decision referred by Mr. Karia which permits alternative plea, squarely applies to the facts of the case. The court has categorically stated that it is open to a defendant to take even contrary stands or contradictory stands. I have read para 6A. A reading of the contents shows that by way of amendment in the written statement, defendant wants to take an alternative plea. Thus, the learned judge has committed an error in refusing to grant amendment on the ground that it is not open to the defendant to take a contradictory view.

5. In view of this, the revision application is allowed. The impugned order dated 11.1.1995 passed by the Assistant Judge, Morvi is quashed and set aside. The amendment application Exh. 13 is granted. Rule is made absolute.

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